



April 10, 2013

VIA E-MAIL STEFANIE.MANN@SOS.STATE.CO.US

Stephanie Mann
Colorado Department of State
1700 Broadway, Ste. 200
Denver, CO 80290

Re: ES&S Response on HAVA Complaint Hearing on April 3, 2013

Dear Ms. Mann:

This letter is a response from Election Systems & Software, LLC (“ES&S”), to some of the matters raised at the hearing on April 3, 2010, before the Colorado Secretary of State on the HAVA Complaint filed by Citizen Center, Marilyn Marks, and Lisa Cyriaks (hereinafter collectively “Citizen Center”).

In response to a question from Ms. Staiert, we have confirmed that voting machines from different manufacturers cannot download their election data into a single election management program. The reason for this was recognized by all at the hearing: the proprietary nature of the software and firmware of each manufacturer. For example, ES&S’ Unity software is not able to accept voting data downloads from a Premier voting machine nor is Premier’s GEMS software able to accept voting data downloads from an ES&S voting machine. This same circumstance is true between voting machines of any manufacturer whose has voting machines certified in Colorado. Because the software and firmware of the voting machines, as well as the election results management software, are all confidential, proprietary, and trade secret information of the respective manufacturer, it is not possible to design either the machines or the software to send or accept downloads of voting data to those of another manufacturer.

This does not mean, however, that election results cannot be consolidated for purposes of reporting. There is a solution already certified and approved by the Colorado Secretary of State for such an election day configuration used by Saguache County in the November 2012 election. ES&S’ Unity software (“Unity”), including the version certified in Colorado, allows for the manual entry of additional voting data in an election management program to be added to voting data already downloaded directly from ES&S voting machines. Of course, this manual entry of additional voting data does not compromise the data previously downloaded from ES&S voting machines as that data is also preserved and recoverable in its original form if needed. The

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foregoing results in a consolidated election report from two certified voting machines from different manufacturers. Please also note that such reports can be set up to indicate which data came from manual entry, and in any event such entries are also available through a “manual corrections audit log.”

In response to another related question by Ms. Staiert, election worker training can and does address protocols for safe and accurate manual entry of voting data. Several methods are addressed, all of which include the involvement of more than one election worker so that voting data is proofed or otherwise verified as it is manually entered. ES&S customers in other states effectively and successfully use such combination of downloaded and manually entered voting data. For example, one customer in another state uses the same configuration as that used by Saguache in November 2012, that is, a combination of ES&S M100 voting machines and Premier AccuVote TSX voting machines.

Furthermore, voter privacy can be maintained during the above-described process contrary to the assertions made at the hearing. Specifically, Citizen Center voiced a concern that because only a few voters used the Premier voting machines in Saguache County in November 2012, and because the VVPAT was “unfurled” to manually enter the ballots, those few voters could be identified due to the order of the ballots shown on the VVPAT. This is not a concern, however, because the last report shown on a VVPAT is a summary of the votes cast, meaning that the top of the paper tape, which is most readily accessible at the end of voting, is all that is needed to identify the votes cast and to be manually entered. In this way, the election workers do not need to review the paper trail for any individual ballot, so voter privacy is preserved and the concern of Citizen Center is alleviated.

ES&S can also verify that, as suggested by Citizen Center, Unity is designed to download, tabulate, and report all election data from an election using both ES&S M100 voting machines and ES&S iVotronic voting machines.

In response to another inquiry from Ms. Staiert regarding the Saguache County election, ES&S does not believe that there are factual matters in dispute. There is no dispute as to what equipment configuration was used by Saguache County in November 2012; there is no dispute that the configuration was submitted to and subsequently approved by the Secretary; there is no dispute that the Saguache County election results contained errors that were the result of human error; there is no dispute the errors were identified and corrected; and there is no dispute that the results of the elections were unchanged after the errors were corrected. Indeed, Citizen Center expressly stated on the record at the hearing that the voting machines were not the source of the errors.

Lastly, although somewhat unclear, Citizen Center’s complaint requests as part of the relief sought that the Secretary require future Saguache County elections to use certified components only that have been tested as a “system.” To the extent this argument was not waived at the hearing by failing to present evidence or argument, ES&S believes the requested relief is inconsistent with the certification and use of voting machines in Colorado. In this regard, one counter-argument is that, upon review of the Secretary’s website showing what voting equipment

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is certified for use in Colorado, it is clear that a county has the flexibility to purchase certified election equipment as needed. Counties differ by size, needs, and budgets, and not every county has the budget to purchase every piece of equipment from a single manufacturer that is certified by the Secretary. Counties should, and do, purchase the certified voting equipment needed in its particular case, and use that equipment in conjunction with all other related election materials as needed to run its election. In this particular instance, the voting equipment and its configuration/use was approved by the Secretary, who also had monitors on site overseeing the November 2012 election. The relief Citizen Center seeks is therefore unnecessary and also inconsistent with how the Colorado Secretary of State interprets and applies Colorado election laws.

By submitting the foregoing, ES&S is not waiving any other facts, arguments or positions it may have regarding any matter set forth herein, all of which are expressly reserved. We thank you for the opportunity to provide this information, and we are available if you have any further questions.

Very truly yours,

Daniel J. Fischer

DJF/lc